

REMARKS

By this Amendment, claims 10, 21-23, 26, 56-69, 80, 82-85, and 91 have been canceled without prejudice or disclaimer and new claims 102-135 have been added. Applicants reserve the right to re-present the subject matter of the canceled claims at a later time in this application or in a related application. New claims 103-135 depend either directly or indirectly from one of independent claims 20, 93, and 94. New claims 102-135 have been added to further define the invention and are fully supported by the original specification and drawings. No new matter has been added.

In the outstanding Office Action dated May 4, 2004, the Examiner indicated that claim 87 was missing, and therefore, claims 88-102 were misnumbered. The Office Action states that the Examiner renumbered claims 88-102 as claims 87-101, respectively. The listing of claims in the Amendments section of this paper reflects the renumbering done by the Examiner. Amendments have been made as necessary to make claim dependency consistent with the renumbering.

The Office Action indicates that claims 41, 92, 94, 100, and 101 are allowed. The Office Action further indicates that claims 10-16, 26-39, 50-53, 65, 66, 85, and 88-90 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants thank the Examiner for the allowance of claims 41, 92, 94, 100, and 101 and acknowledge the indication of allowable subject matter in claims 10-16, 26-39, 50-53, 65, 66, 85, and 88-90. By this Amendment, Applicants have rewritten allowed claim 52 in independent form. New dependent claims 123-135 have been added to further define the invention and depend either directly or indirectly from allowed claim 94.

Applicants would like to thank the Examiner for the courtesy extended during a telephone interview held with the undersigned over the course of several days, June 16, 2004 to June 21, 2004. During these conversations, a few issues were discussed. First, Applicants' representative noted although claim 99 was listed as rejected on the first page of the Office Action, it was not addressed in any rejection within the body of the Office Action. Examiner Jackson indicated that claim 99 should have been listed with the claims rejected under the King et al. patent.

Applicants' representative then discussed the King reference and certain independent claims (claims 20, 93, and 99) that were rejected as being anticipated by the King reference. Applicants' representative noted that although the Examiner relied on element 3 of the King reference for teaching a flexible elongate member that connects first and second anchors, element 3 is not actually part of the device of King but is instead a guide wire used to implant the device. The parts that connect the two closure elements 8, 9 of King together are the hub 84 and sleeve 94, which snap fit together to provide a rigid connection between the closure elements of the King device. The Examiner acknowledged that element 3 of King is a guide wire, and is not intended to permanently connect the closure elements of the device together once they are implanted in the body. The Examiner further indicated that language added to the independent claims to indicate that the flexible elongate member remains connected to the two anchors when the anchors are left in the body would overcome the rejection of the claims under King. The Examiner also suggested that language that indicated that the flexible elongate member is not a guide wire would also define over King.

In the Office Action, claims 1-8, 17-19, 21-25, 40, 56-61, 70-72, 77, 79-82, 84, 86, 87, 91, and 95-98 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,944,738 to Amplatz et al.

Although Applicants disagree with this rejection, in an effort to further prosecution, Applicants have canceled rejected claims 21-23, 56-61, and 91. In addition, Applicants amended independent claim 1, from which claims 2-19, 95, and 96 depend either directly or indirectly, to include the allowable subject matter of claim 10. Claim 10 has been canceled. For at least this reason, Applicants assert that claim 1 and the claims that depend therefrom are allowable over Amplatz. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

Applicants also amended independent claim 24, from which claims 25-40, 97, and 98 depend either directly or indirectly, to include the allowable subject matter of claim 26. Claim 26 has been canceled. For at least this reason, Applicants assert that claim 24 and the claims that depend therefrom are allowable over Amplatz. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

Independent claim 70, from which claims 71-90 depend either directly or indirectly, has also been amended to include the allowable subject matter of claim 85, which includes the subject matter of claims 80 and 82-84. Claims 80 and 82-85 have been canceled. For at least this reason, Applicants assert that claim 70 and the claims

that depend therefrom are allowable over Amplatz. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

In view of the cancellation of claims 21-23, 56-69, and 91, and the amendment of independent claims 1, 24, and 70 to incorporate allowable subject matter, Applicants submit that the rejection of claims 1-8, 17-19, 21-25, 40, 56-61, 70-72, 77, 79-82, 84, 86, 87, 91, and 95-98 as being anticipated by Amplatz is moot. Reconsideration and allowance of these claims is requested.

In the Office Action, claims 1-9, 17-25, 42-49, 54-64, 67-84, 86, 87, 91, and 93 (and claim 99 per the telephone interview) were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,874,388 to King et al. Independent claims 21-23, 56, and 91 have been canceled.

With regard to claims 1-9 and 17-19, claim 1 has been amended, as discussed above, to incorporate the allowable subject matter of claim 10. For at least this reason, Applicants assert that claim 1 and dependent claims 2-9 and 17-19 are allowable over King. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

With regard to claims 24 and 25, claim 24 has been amended, as discussed above, to incorporate the allowable subject matter of claim 26. For at least this reason, Applicants assert that claim 24 and dependent claim 25 are allowable over King. In addition, the dependent claim recites unique combinations that are neither taught nor

suggested by the cited art, and therefore also is separately patentable. Reconsideration is requested.

With regard to claims 42-49, 54 and 55, independent claim 42 has been amended to incorporate the allowable subject matter of claim 50. For at least this reason, Applicants assert that claim 42 and dependent claims 43-49, 54, and 55 are allowable over King. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

With regard to claims 70-84, 86, and 87, independent claim 70 has been amended to incorporate the allowable subject matter of claim 85. Claims 80 and 82-85 have been canceled. For at least this reason, Applicants assert that claim 70 and dependent claims 71-79, 81, 86, and 87 are allowable over King. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration is requested.

With regard to claims 20, 93, and 99, each has been amended to recite "wherein the flexible elongate member is configured to permanently connect the first and second anchors implanted in the body." As discussed above, during the telephone interview between the undersigned and Examiner Jackson, it was agreed that language indicating that the flexible elongate member remains connected to the two anchors when the anchors are left in the body would overcome the rejection of the claims under King. Applicants assert that as used herein, the term "configured to permanently connect" is intended to convey that the flexible elongate member is implantable and will remain in

the body with the first and second anchors, connecting the implanted anchors to one another. It should be understood that this in no way excludes elongate members that break during implantation or while implanted in the body or those that are cut to allow the removal of an anchor from the body after a period of implantation. This term also does not exclude flexible elongate members made from a bioresorbable material, such that they may dissolve over a period of time. Applicants assert that claims 20, 93, and 99 are now in condition for allowance. New claims 103-122 depend either directly or indirectly from one of independent claims 20 and 93 and are allowable for at least the same reasons. In addition, each of the dependent claims recites unique combinations that are neither taught nor suggested by the cited art, and therefore each also are separately patentable. Reconsideration and allowance of the claims is requested.

New claim 102 contains the subject matter of original claim 20 and the additional limitation that the flexible elongate member does not include a guide wire. By this language, Applicants intend to make clear that the recited flexible elongate member does not include a guide wire, as suggested by the Examiner during the telephone interview. Allowance is requested.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

In view of the foregoing amendments and remarks, Applicants respectfully request reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: July 19, 2004

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